

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DERRICK LEE CARDELLO-SMITH,

Plaintiff,

Case Number 21-11595  
Honorable David M. Lawson

v.

GOOGLE LLC, GOOGLE INC.,  
MICROSOFT LLC, JOANNE THEAKSTON,  
JULIETTE BIRD, KIM WORTHY,  
PROSECUTOR, DEYANA UNIS,  
ASS'T PROSECUTOR, SUZETTE  
SAMUELS, ASS'T PROSECUTOR,  
CARLI CARPENTER (BOIKE),  
HEATHER LYNN NIELSON, MDOC/MCF/LRF  
CORRECTIONS OFFICERS, HEIDI  
WASHINGTON, MR. PLACHTA,  
MR. CHAUVEZ, J.B. (CORRECTIONS  
OFFICER M.D.O.C.), CUSTOMER PRIVACY  
INC-CORPORATION, LIARSCHEATERSAND  
BASTARDS.COM, CONTACTPRIVACY.COM.,  
NS1.AFTERMIC.COM, NS2.AFTERMIC.COM,  
CHEATERSANDBASTARDS.COM, CONTACT  
PRIVACY.COM., LIARSCHEATERSANDBASTARDS,  
INC, CORPORATION, ENTITY, COMPANY,  
CHEATERSANDBASTARDS INC, ENTITY,  
CORPORATION, CHEATERS AND BASTARDS INC,  
CORPORATION, COMPANY, CHEATERSAND  
BASTARDS.COM-TECH-CUSTOMERS.WHOISPRIVACY.CORP.COM,  
BRAD.NS.CLOUDFARE.COM,  
MONA.NS.CLOUDFARE.COM, LIARS, CHEATERS  
AND BASTARDS AS A COMPANY,  
CORPORATION, ENTITY, STAFF, CHEATERS,  
AND BASTARDS AS A COMPANY, CORPORATION,  
ENTITY, WHOLE, OWNERS OF CHEATERS  
AND BASTARDS, OWNERS OF LIARS CHEATERS  
AND BASTARDS, EMPLOYEES AND  
CONTRACTORS OF THE DOMAIN KNOWN  
AS CHEATERS AND BASTARDS USED BY DOMAIN  
ADMINISTRATION AND WHOISPRIVACY.  
CORPORATION.COM, ALL AFFILIATES,  
CONTRACTORS, LAWYERS, OWNERS OF

**OPINION AND ORDER**  
**DENYING APPLICATION TO**  
**PROCEED WITHOUT PREPAYMENT**  
**OF FEES AND COSTS AND**  
**DISMISSING COMPLAINT**

INTERNET DOMAIN SERVICE BS CORP.,  
TUCOWS INC, CORPORATION, COMPANY ENTITY,  
ALL EMPLOYEES AND OFFICIALS OF SAID  
SITES, COMPANY, ORGANIZATION, ENTITIES,

Defendants,

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**OPINION AND ORDER DENYING APPLICATION TO PROCEED WITHOUT  
PREPAYMENT OF FEES AND COSTS AND DISMISSING COMPLAINT**

This matter is before the Court on the plaintiff's *pro se* civil rights complaint filed under 42 U.S.C. § 1983. The plaintiff is an inmate confined at Michigan's Muskegon Correctional Facility in Muskegon, Michigan. He also has filed an application for leave to proceed without prepayment of costs. The plaintiff cannot proceed *in forma pauperis* because at least three of the plaintiff's prior civil rights complaints have been dismissed as frivolous, malicious, or for failing to state a claim upon which relief could be granted in violation of 28 U.S.C. § 1915(g). His case, therefore, will be dismissed without prejudice, but he may revive his lawsuit by payment of the appropriate filing fees.

Indigent litigants may apply to the Court to waive filing fees required to commence a lawsuit. 28 U.S.C. § 1915(a)(1). Otherwise, the "[t]he clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee . . . ." *See also Owens v. Keeling*, 461 F.3d 763, 773 (6th Cir. 2006).

The Prison Litigation Reform Act of 1995 ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996), prevents a prisoner from bringing a civil action *in forma pauperis* if a court previously dismissed three or more complaints as frivolous, malicious, or for failing to state a claim upon which relief may be granted unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g) (1996); *Thaddeus-X v. Blatter*, 175 F.3d 378, 400 (6th Cir.

1999); *Witzke v. Hiller*, 966 F. Supp. 538, 540 (E.D. Mich. 1997). A federal district court may raise the three strikes provision on its own, *Witzke*, 966 F. Supp. at 539, and may take judicial notice of a plaintiff's prior dismissals, *Green v. Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996); *Anderson v. Sundquist*, 1 F. Supp. 2d 828, 830 (W.D. Tenn. 1998).

A review of federal court records indicates that the plaintiff has at least four prior civil rights complaints that were dismissed by federal courts for being frivolous, malicious, or for failing to state a claim upon which relief could be granted. *See Smith v. Penman, et. al.*, No. 20-12052 (E.D. Mich. Feb. 18, 2021); *Smith, et. al. v. Unis, et. al.* No. 19-12219 (E.D. Mich. Aug. 22, 2019); *Smith v. Hall et al.*, No. 18-277 (W.D. Mich. Apr. 3, 2018); *Smith v. Wayne Cnty. Prosecutor's Office, et al.*, No. 09-12287 (E.D. Mich. June 25, 2009).

In addition, the plaintiff has been denied leave to proceed *in forma pauperis* under 28 U.S.C. § 1915(g), the “three-strikes” rule, because of these frivolity dismissals. *See Smith v. Washington*, No. 20-1211, 2021 WL 302614 (W.D. Mich. Jan. 29, 2021); *Smith v. Writeaprisoner.com, Inc.*, No. 20-1201, 2021 WL 210716 (W.D. Mich. Jan. 21, 2021); *Smith v. Penman*, No. 18-1212, 2018 WL 6697270 (W.D. Mich. Dec. 20, 2018).

The plaintiff has not alleged any facts in this case that would establish that he is in imminent danger of serious physical injury, and thus, he does not come within the exception to the mandate of 28 U.S.C. § 1915(g), which prohibits him from proceeding *in forma pauperis* in light of his four prior frivolity dismissals. *Mulazim v. Michigan Dept. of Corrections*, 28 F. App'x. 470, 472 (6th Cir. 2002).

The plaintiff's civil rights complaint is therefore subject to dismissal under section 1915(g). However, the plaintiff may revive any of the claims dismissed under 28 U.S.C. § 1915(g) if he decides to pay the \$350 filing fee. *See* 28 U.S.C. § 1914; *Witzke*, 966 F. Supp. at 540. If the

plaintiff is unable to pay the full amount, he may submit a partial filing fee and pay the remainder in installments. *See* 28 U.S.C. § 1915(a); *Miller v. Campbell*, 108 F. Supp. 2d 960, 962 (W.D. Tenn. 2000).

Accordingly, it is **ORDERED** that the complaint is **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1915(g).

It is further **ORDERED** that the plaintiff's application to proceed without prepaying fees or costs (ECF No. 2) is **DENIED**.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: October 20, 2021